

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|   |   |                             |
|---|---|-----------------------------|
| <b>In the Matter of</b>                             | ) |                             |
|   | ) |                             |
| <b>Implementation of the Pay Telephone</b>          | ) |                             |
| <b>Reclassification and Compensation Provisions</b> | ) | <b>CC Docket No. 96-128</b> |
| <b>Of the Telecommunications Act of 1996</b>        | ) |                             |

**REPLY COMMENTS  
WORLDCOM, INC.**

**Larry Fenster  
1133 19<sup>th</sup> St., NW  
Washington, DC 20036  
202-736-6513**

**June 24, 2002**

## TABLE OF CONTENTS

|                    |  |          |
|--------------------|--|----------|
| <b><u>I.</u></b>   | <b><u>SUMMARY</u></b> .....  | <b>1</b> |
| <b><u>II.</u></b>  | <b><u>THE COMMISSION SHOULD REFRAIN FROM PREEMPTING STATE DECISIONS REGARDING COMMISSION LEVELS, RATES, OR OTHER MATTERS GOVERNING STATE INMATE FACILITIES</u></b> ..... | <b>2</b> |
| <b><u>A.</u></b>   | <b><u>THE MARKET FOR INMATE CALLING SERVICES CONTRACTS IS COMPETITIVE</u></b> .....  | <b>2</b> |
| <b><u>B.</u></b>   | <b><u>THE COMMISSION SHOULD REFRAIN FROM SETTING A CEILING FOR EITHER RATES OR COMMISSIONS</u></b> .....   | <b>3</b> |
| <b><u>1.</u></b>   | <b><u><i>States are entitled to use commissions to offset the cost of administering inmate facilities</i></u></b> .....  | <b>3</b> |
| <b><u>2.</u></b>   | <b><u><i>States are in the best position to determine the right mix between of commission levels, rate levels, and funding</i></u></b> .....                             | <b>3</b> |
| <b><u>3.</u></b>   | <b><u><i>There is no safe harbor for either a maximum rate or commission level</i></u></b> .....   | <b>4</b> |
| <b><u>III.</u></b> | <b><u>THERE IS NO EVIDENCE THAT EXISTING LOCAL RATE CAPS ARE BELOW THE MARGINAL COST OF A LOCAL CALL</u></b> .....   | <b>5</b> |
| <b><u>IV.</u></b>  | <b><u>DEBIT CALLING AND PERSONAL TOLL FREE NUMBERS ARE EXPENSIVE AND POSE SERIOUS SECURITY RISKS</u></b> .....   | <b>7</b> |
| <b><u>A.</u></b>   | <b><u>IMPLEMENTING DEBIT SYSTEMS SHOULD BE LEFT TO DISCRETION OF THE STATES</u></b> .....  | <b>7</b> |
| <b><u>B.</u></b>   | <b><u>IMPLEMENTING PERSONAL TOLL FREE NUMBERS SHOULD BE LEFT TO DISCRETION OF THE STATES</u></b> .....   | <b>8</b> |
| <b><u>C.</u></b>   | <b><u>IMPLEMENTING PERSONAL VOICE MAIL ACCOUNTS SHOULD BE LEFT TO DISCRETION OF THE STATES</u></b> .....   | <b>9</b> |
| <b><u>V.</u></b>   | <b><u>CONCLUSION</u></b> .....   | <b>9</b> |

## **I. Summary**

WorldCom takes this opportunity to reply to Comments of the Inmate Calling Service Providers Coalition (ICSPC), the RBOC Payphone Coalition (RBOC Coalition), T-Netix, and Citizens United for Rehabilitation of Errants (CURE) filed in the above-captioned docket.<sup>1</sup>

There is a consensus among those filing comments that the bids from inmate calling services providers are obtained in a competitive manner. Inmate authorities also have the ability to regulate service quality through contractual arrangements. Neither market failures, nor absence of legal authority justify the need for an additional layer of oversight by the Commission. There is a consensus among all parties that state and local authorities are often in the best position to regulate the terms and conditions for providing telecommunications services to their inmate populations.

The record does not support a single maximum level of rates or commission payments. The existence of different state and local cost conditions and funding sources would result a single rate or commission being simultaneously unreasonably low and unreasonably high. Local and state specific policies are required in this market. The Commission should let each state and/or each inmate facility determine the level of rates and commission payments.

Data submitted into the record confirms that revenues from local inmate calls made from locations that do not make commission payments recover the cost of making a local call and make a significant contribution to the recovery of common costs. Revenue from local calling contributes at least 25 percent, and on average 80 percent, towards the recovery of common

---

<sup>1</sup> Comments of ICSPC, RBOC Coalition, T-Netix, and CURE, in Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking ("NPRM"), CC Docket No. 96-128, filed May 24, 2002.

costs. Local rate caps are therefore not set below the direct cost of providing local service and neither intrastate nor interstate calls subsidize the provision of local inmate calls.

There is a consensus among commenting parties that debit payment methods, personal toll free numbers and voice mail accounts, will not replace collect calling systems, and so will require additional personnel, as well as additional investment in specialized equipment. There is also a consensus that these above-mentioned options increase security risks inside the prison facility or run a risk of allowing inmates access to numbers not on their allowed numbers list. These calling options will also reduce revenues to both ICS providers and inmate facilities. The decision to implement these calling options should therefore be left to the prerogative of the States.

## **II. The Commission Should Refrain From Preempting State Decisions Regarding Commission Levels, Rates, Or Other Matters Governing State Inmate Facilities**

### **A. The Market For Inmate Calling Services Contracts Is Competitive**

CURE asserts there is a lack of market forces in order to justify Commission involvement in capping rates, limiting commissions, and other regulatory measures.<sup>2</sup> Contrary to its assertions, awarding a contract to a single provider does not in itself indicate an absence of market pressure. WorldCom, T-Netix and the RBOC Coalition discuss the competitive market conditions under which bidding for the contract to provide inmate calling services (ICS) occurs.<sup>3</sup> There are many providers, typically between three and six, bidding to become the ICS provider. If the franchise is awarded as a result of a legitimate request for proposals, after seeking bids from many providers, the provider awarded the contract has been chosen because it offered the most competitive combination of service features and rates. If service quality declines below the

---

<sup>2</sup> CURE Comments at 3.

<sup>3</sup> WorldCom Comments at 4, T-Netix Comments at 4, RBOC Coalition Comments at 4.

terms specified in the contract, the inmate facility has the legal authority to require compliance, and if quality does not improve, contracts permit the inmate facility to abrogate the contract and seek a new ICS supplier. In addition ICS providers stand to lose revenues, due to reduced calling volumes, if service quality declines. In short, the market for inmate calling services is competitive and service quality, rates, and other terms and conditions are established and monitored by the inmate facility. Neither market failures, nor absence of department of correction authority to enforce contract terms, justify the need for an additional layer of oversight by the Commission.

B The Commission Should Refrain From Setting A Ceiling For Either Rates Or Commissions

1. States are entitled to use commissions to offset the cost of administering inmate facilities

WorldCom, the RBOC Coalition and T-Netix agree that states are entitled to use, and rely upon, commissions to offset the cost of building and administering inmate facilities.<sup>4</sup> WorldCom agrees with the RBOC Coalition that setting the commission level by States is a legitimate exercise of their police power.<sup>5</sup> No one contests this point in their comments.

2. States are in the best position to determine the right mix between of commission levels, rate levels, and funding

T-Netix and CURE nevertheless recommend that the Commission reduce the level of commissions.<sup>6</sup> The Commission should refrain from interfering with decisions regarding the appropriate level of commissions States have already made. States are in the best position to balance the security needs of their citizens, the terms and conditions under which inmates are to

---

<sup>4</sup> Comments of: WorldCom at 4; RBOC Coalition at 4, T-Netix at 3, 7.

<sup>5</sup> Comments of the RBOC Coalition at 5.

<sup>6</sup> Comments of T-Netix at 4-8, CURE 4.

have access to telecommunications services, the budgets allocated to inmate facilities, and the revenue sources which fund those budgets.

CURE supports the notion that States should have final authority over inmate matters when it comes to setting caps on intrastate inmate rates, and opposes having the Commission preempt those decisions, but inconsistently urges the Commission to preempt States who fail to impose caps on commission levels.<sup>7</sup> CURE and T-Netix also both recognize that some states have chosen to limit the level of commissions or have directed inmate authorities to place greater emphasis on rates and charges in their evaluation of competitive bids.<sup>8</sup> However, other states have expressly granted correctional facilities the authority to set terms and conditions for all aspects of ICS. For example, and as WorldCom pointed out in its comments, the Virginia legislature eliminated the setting of rates from the purview of the State Corporation Commission, and allowed rates and other contract terms, including commission levels, to be governed by the terms of the contract.<sup>9</sup> States should be free to raise, lower or retain commissions at existing levels in response to the specific funding requirements, security requirements, and inmate calling cost conditions that operate in their states.

3. There is no safe harbor for either a maximum rate or commission level

T-Netix forcefully argues against having the Commission to determine a maximum level of rates for inmate calling services, because cost conditions and service requirements differ from facility to facility. Ensuring that a single rate for inmate calling services would always be compensatory would require setting the cap equal to rates at the most expensive locations. On

---

<sup>7</sup> Comments of CURE at 6.

<sup>8</sup> Comments of: CURE at 5; T-Netix at

<sup>9</sup> Comments of WorldCom at 6.

the other hand, setting the cap below this level could make it impossible for some ICS providers to be fairly compensated for their services.<sup>10</sup>

Similar problems would arise if the Commission were to set a default level of commissions. If the Commission were to choose a level of commissions that enabled all states to continue funding inmate facilities in the present manner, it would need to be set at the highest commission level in existence. On the other hand, if the Commission were to choose a single default level below the highest level, some states would not be able to meet inmate budget commitments, or would have to reduce spending outside of inmate settings.<sup>11</sup> The Commission should allow each state and inmate facility to continue to determine the policies which are most appropriate to their specific local and state conditions.

### **III. There Is No Evidence That Existing Local Rate Caps Are Below The Marginal Cost Of A Local Call**

ICSPC submits a second study of the cost of making local calls from inmate facilities.<sup>12</sup> One important flaw identified by the Commission in ICSPC's first cost study was its assumption that every call should recover an equal proportion of common costs.<sup>13</sup> The Commission also criticized the original study for failing to show that revenues from local services failed to recover the direct cost of providing service.<sup>14</sup> The Commission identified other flaws as well.

---

<sup>10</sup> Comments of T-Netix at 10.

<sup>11</sup> Comments of WorldCom at 6.

<sup>12</sup> Comments of ICSPC, Attachment 2, State Imposed Rate Ceilings for Local Calls.

<sup>13</sup> NPRM at & 23.

<sup>14</sup> *Id.*, at &24.

ICSPC contends that this study corrects the flaws the Commission identified in its original study.<sup>15</sup> In this study, ICSPC compares the direct, incremental, cost of providing local inmate services, to local revenues in settings that do not provide commission payments to the inmate facility. ICSPC concludes that the direct cost of providing a local collect call is \$2.44 per call.<sup>16</sup> ICSPC compares this cost per local collect call to the caps imposed by various states on local collect calling.<sup>17</sup> ICSPC concludes that “...twenty states impose rate ceilings that are less than the \$2.44 per call that the Wood cost study finds to be the cost of providing local collect calling service to a marginal location.”<sup>18</sup>

Even a cursory examination of the second study shows it continues to suffer from the two flaws identified above. While the study measures the incremental cost of a local call, the data show the direct cost of a local call, excluding all common costs, is \$.53, not \$2.44.<sup>19</sup> The cost of \$2.44 is obtained only by allocating all common costs to local service.<sup>20</sup> This allocation is even less defensible than the allocation method utilized by the first study, which the Commission criticized for allocating common costs equally to all services. ICSPC’s survey of local rate caps shows that the lowest cap on a 12-minute local collect call is \$1.00.<sup>21</sup> Thus, even at the location with the lowest rate cap, revenue from local calling contributes \$.47 towards the recovery of

---

<sup>15</sup> ICSPC at 4.

<sup>16</sup> *Id.*, at 5.

<sup>17</sup> *Id.*, Attachment 2, State Imposed Rate Ceilings for Local Calls.

<sup>18</sup> *Id.*, at 5.

<sup>19</sup> Average Incremental Cost per call, weighted by number of lines, ICPSC, Attachment 1, Inmate Phone Local Cost Study, Table entitled Results – Marginal Locations.

<sup>20</sup> *Id.*, Attachment 1, Inmate Phone Local Cost Study, Table entitled Results – Marginal Locations.

<sup>21</sup> *Id.*, Attachment 2, State Imposed Rate Ceilings for Local Calls.



common costs, nearly 25 percent.<sup>22</sup> According to ICSPC, the average of cap on local rates is \$2.07 per call.<sup>23</sup> Thus, on average, even where local rates are capped, local revenues recover an average of 80 percent of the common cost of providing inmate payphone service. The Commission may rest assured that existing local rate caps are not set below the direct cost of providing local service and that neither intrastate rates, nor interstate rates, are subsidizing the provision of local inmate calls.

#### **IV. Debit Calling And Personal Toll Free Numbers Are Expensive And Pose Serious Security Risks**

##### **A. Implementing Debit Systems Should Be Left To Discretion Of The States**

WorldCom, T-Netix, and ICSPC all agree that debit payment methods require more personnel to administer than collect calling systems, and require investment in specialized equipment that rates and debits accounts.<sup>24</sup> The recovery of these additional costs in prisons with much lower populations than Federal prisons will place upward pressure on average costs, and therefore on rates and commissions.

Moreover, where implemented, debit systems have not replaced collect calling systems. Rather, the two billing systems coexist. ICS providers will not necessarily reduce bad debt, for as T-Netix points out, adverse selection will probably occur, with those most likely to have payment problems opting to be billed according to collect billing.<sup>25</sup> The above-mentioned ICS

---

<sup>22</sup> The average fixed cost of a call, weighted by the number of lines, is \$1.91. See, Attachment 1, Inmate Phone Local Cost Study, Table entitled Results – Marginal Locations.

<sup>23</sup> *Id.*, Attachment 2, State Imposed Rate Ceilings for Local Calls.

<sup>24</sup> Comments of WorldCom at 11, T-Netix at 9, ICSPC at Attachment 4, Evaluation of Proposed Alternative Approaches to the Provision of Inmate Telephone Services.

<sup>25</sup> Comments of T-Netix at 9.

providers also identify the security risks posed by debit calling systems.<sup>26</sup> Because debit calling will increase costs, reduce revenue, and poses additional security risks, States are in the best position to determine whether and how to implement this calling option.

B. Implementing Personal Toll Free Numbers Should Be Left To Discretion Of The States

Security risks, costs, and revenue losses, also militate against allowing families to establish a personal toll-free number into which an inmate may call. Inmate facilities do not currently allow inmates access to toll free numbers in order to limit opportunities for fraud and intimidation of called parties. Inmate facilities currently validate numbers inmates propose for inclusion on their allowed call list by performing reverse directory lookups on these numbers to determine that the identity of the party associated with the number matches the identity listed by the inmate. This is a necessary security check to ensure that the inmate does not gain access to judges and witnesses. Departments of Corrections do not have this access to toll free number data bases, and are therefore unable to perform this necessary security check for personal toll free numbers.

In addition, allowing inmates to access only specific toll-free numbers would require special programming to allow only allowed toll free numbers in the inmates' allowed call list. Finally, allowing inmates to call personal toll-free numbers would reduce revenues, and commission payments, which are used to offset the cost of building and maintaining inmate facilities and other state programs. States are keenly aware of the tradeoffs between utilizing

---

<sup>26</sup> Comments of: WorldCom at Attachment 1, Testimony of John J. Armstrong, Commissioner, Connecticut Department of Correction, T-Netix at 9, ICPSC, Attachment 4.

various billing methods and their ability to fund the operations of inmate facilities.<sup>27</sup> The decision to adopt this billing method should therefore be left to the prerogative of the states.

C. Implementing Personal Voice Mail Accounts Should Be Left To Discretion Of The States

Voice mail accounts will add expense and result in revenue losses to ICS providers and inmate facilities. Implementing voice mail access by an inmate would require the ICS provider to invest in voice response units, additional circuits, and programming to allow inmates to access to their account. As with personal toll free numbers, personal voice mail accounts will reduce revenues for both ICS providers and inmate facilities. States are therefore in the best position to determine the telecommunications services they desire to make available to their inmates, and the terms and conditions under which those services are made available.

V. Conclusion

For the reasons discussed above, WorldCom urges the Commission to adopt the positions advocated herein.

Respectfully submitted

**Larry Fenster**

Larry Fenster  
1133 19th St., NW  
Washington, DC 20036  
202-736-6513

---

<sup>27</sup> For example, a recent bill adopted by the State of Virginia requires the Secretary of Public Safety to address the fiscal impact of various policies that might reduce telecommunications costs to inmate families. See, Chapter 833, An Act To Amend And Reenact § 56-234 Of The Code Of Virginia, Relating To The Provision Of Service By Telephone Companies To Governmental Entities, SB156, Approved April 17, 2002, <http://leg1.state.va.us/cgi-bin/legp504.exe?021+ful+CHAP0833>.

## Statement of Verification

I have read the foregoing, and to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on June 24, 2002

Larry Fenster

Larry Fenster

1133 19<sup>th</sup> St., NW  
Washington, DC 20036  
202-736-6513

## **CERTIFICATE OF SERVICE**

I, Elizabeth Bryant hereby certify that on this 24<sup>th</sup> day of June, 2002, copies of the foregoing were served by regular mail or E-mail on the following:

Glenn Manishin  
Attorney for T-Netix  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> St., NW  
Suite 500  
Washington, DC 20554

Robert Stup, Jr.  
Attorney for Citizens United for Rehabilitation of Errants  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
701 Pennsylvania Ave., NW  
Washington, DC 20004

Aaron Panner  
Attorney for the RBOC Coalition  
Kellog, Huber, Hansen, Todd & Evans, P.L.L.C.  
1615 M St., NW  
Washington, DC 20036

Albert Kramer  
Attorney for Inmate Calling Service Providers Coalition  
Dickstein Shapiro Morin & Oshinsky  
2101 L St., NW  
Washington, DC 20037

Qualex International  
[QualexInt@aol.com](mailto:QualexInt@aol.com)

**Elizabeth Bryant**

Elizabeth Bryant